

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)
**(Phase FCC Triennial
Review 9-Month Phase)**

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING SCHEDULE FOR MASS MARKET SWITCHING
PHASE OF FEDERAL COMMUNICATIONS COMMISSION
TRIENNIAL REVIEW ORDER**

This ruling prescribes the schedule for the Commission's inquiry concerning impairment of competition in serving "mass market" customers¹ without access to unbundled local circuit switching² pursuant to the Federal Communications Commission (FCC) Triennial Review Order (FCC Order). This ruling supplements the schedule that was set by ruling dated October 8, 2003 relating to loops, transport, and batch cut issues. The scope and schedule for mass market switching impairment issues adopted in this ruling takes into account parties' filed comments and oral argument at the prehearing conference held on September 30, 2003.

¹ As defined by the FCC Order, mass market customers consist of analog voice customers that purchase only a limited number of traditional phone lines, and can only be economically served via DS0 loops.

² FCC Order ¶ 473.

Overview of Scope and Scheduling

The FCC Order calls for state commissions to conduct a market-by-market review of the national finding of impairment based on granular analysis of prescribed triggers, i.e. (a) the number of carriers self-provisioning their own switches³ and (b) the extent of wholesalers offering independent network element capacity.⁴ The Commission will also consider the effects of any operational and economic factors on competitive entry.

A single procedural phase shall be set for mass market switching issues to address all relevant evidence bearing on market definition, concurrently with analysis of the triggers. A single Commission decision on mass market switching impairment shall be issued, determining whether the triggers have been met on a market-by-market basis, taking into account all relevant factors, including operational and economic barriers. Although these issues shall be addressed in a single procedural phase, parties' testimony shall be organized sequentially in a manner that corresponds to the two-step analysis outlined in the FCC Order.

As a first step in the analytical process outlined by the FCC, the Commission must apply the self-provisioning and wholesale triggers to particular markets in determining if marketplace deployment of circuit switches serving mass market customers requires a finding of no impairment. The FCC characterizes the triggers as the "principal mechanism for use by states in evaluating whether requesting carriers are in fact not impaired in a particular market." (§ 498.) The FCC Order calls for a second analytical step after the trigger analysis has been performed in the determination of market

³ *TRO*, § 501.

⁴ *TRO*, § 504.

impairment. This second step will proceed along one of two lines, depending on whether or not the triggers are satisfied in a given market, as outlined below. Accordingly, the testimony on mass market switching impairment shall generally be organized in accordance with the analytical process outlined by the FCC Order, as follows:

Step 1 - Analysis of Triggers on a Market-by-Market Basis

Step 2 – Post-Trigger Analysis of Operational/Economic Criteria

(a) Markets Where Triggers Are Satisfied

(b) Markets Where Triggers are Not Satisfied

Conclusions:

Markets that are impaired

Markets that are not impaired

The scope of each of these categories is explained further below.

**Step 1 - Analysis of the FCC Triggers on a
Market-by-Market Basis**

SBC California and Verizon California shall file and serve an initial status report on November 21, 2003, indicating those regions where they intend to claim that the triggers have been met with respect to mass market switching, and also to identify those areas where they do not intend to contest the FCC findings of impairment without access to mass market switching. This status report is intended merely to provide information for parties' use in focusing subsequent discovery, analysis, and case preparation in the most efficient manner.

All parties shall present their full case-in-chief on all mass market switching issues, including market definition, in concurrent opening testimony on December 12, 2003.

In the first portion of their testimony, parties shall address, as step one, the evidence relating to the extent to which the triggers are met in a particular market based on parties' proposed market definitions. Parties' proposed

market definitions for evaluating the triggers shall take into account all relevant evidence, including those factors identified by the FCC Order in ¶ 495. For example, market definition should consider locations of customers being served by competitors, variation of factors affecting competitors' ability to serve each customer group, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies. The market should not be defined so broadly that it encompasses the entire state, nor defined so narrowly that a competitor serving alone would not be able to take advantage of available scale and scope economies from serving a wider market. The definition of markets must also consider the appropriate boundary between mass market and enterprise customers.

Step 2 – Post-Trigger Analysis

(a) - Markets Where Triggers Are Satisfied

The FCC requires state commissions to find “no impairment” in a particular market when either trigger is satisfied subject to certain limitations and further possible inquiry in “exceptional circumstances” as described in ¶ 503 of the FCC Order. In such “exceptional circumstances,” the Commission may identify specific markets that facially satisfy the self-provisioning trigger, but in which some significant barrier exists that prevents further entry by carriers that provide their own switches. To provide for a record to identify any such markets, parties may present, as Step 2(a) in their testimony, evidence relating to an exceptional barrier to entry in a particular market, where the triggers are deemed satisfied. An example of such exceptional barriers would be the lack of available collocation space for additional equipment. Testimony on such potential barriers will form the basis for the Commission to make findings in this area. These findings shall be made in the same Commission decision in which the trigger analysis is addressed. If warranted, these findings

may form the basis for a Commission petition to the FCC for a waiver of the application of the trigger in a particular market, to last until the impairment to deployment no longer exists pursuant to ¶ 503.

(b) - Markets Where Triggers are Not Satisfied

In markets where the triggers are not satisfied, parties may present evidence in Step 2(b) as to whether conditions in a particular market still may be conducive to competitive entry without access to unbundled local circuit switching based on certain economic and operational criteria. The FCC prescribes the following types of operational evidence to be considered in this regard: (1) whether competitors are using their own switches to serve customers within the relevant market, and (2) whether incumbent local exchange carrier (ILEC) performance in provisioning loops, difficulties or delays in obtaining collocation space, and difficulties in obtaining cross connects in an ILEC's wire center are creating barriers to competitive local carriers (CLECs). The FCC's Order also requires a review of economic evidence, including an analysis of potential revenues and costs as well as consideration of the most efficient means for CLEC entry.

Evidence relevant to this inquiry would include information regarding ILEC practices and procedures in provisioning cross-connects linking CLECs' facilities, CLECs' complaints regarding the ILEC's past performance in this area, the ILEC's response to these complaints, the costs incurred in connection with deficient performance in this regard, and the degree to which those costs render entry into a given market uneconomic.

To the extent that parties believe that a market is still impaired after considering the above factors, the testimony should address whether, and if so, how impairment might be cured by a more limited unbundling requirement,

such as “rolling” or temporary access to unbundled switching for a period of 90 days or more, just until the impairment can be cured.

Reply Testimony

In reply testimony, parties may challenge both the market definitions as well as claims of the extent that triggers are met or that competition is or is not impaired. In the interests of a complete record, each party’s reply testimony should address the extent to which triggers are met or competition is impaired based on both one’s own assumed market definitions as well as assuming opposing parties’ market definitions were adopted.

Schedule for Mass Market Switching Issues

Proceedings shall be scheduled on mass market switching issues as set forth below.

<u>Event</u>	<u>Date</u>
ILEC Status Report	November 21, 2003
Opening Testimony	December 12, 2003
Reply Testimony	January 9, 2004
Prehearing Conference*	January 20, 2004
Evidentiary Hearings*	January 26-February 6, 2004
Opening Briefs	March 8, 2004
Reply Briefs	March 22, 2004
ALJ’s Proposed Decision	May 18, 2004
Full Panel Hearing*	June 10, 2004
Commission Decision	June 18, 2004

* The Prehearing Conference, Evidentiary Hearings, and Full Panel Hearing shall all be held at the Commission’s Courtroom, 505 Van Ness Avenue, San Francisco, California, starting at 10:00 a.m.

IT IS RULED that the scope and schedule for mass market switching issues set forth above is hereby adopted.

Dated October 20, 2003, in San Francisco, California

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Schedule For Mass Market Switching Phase of Federal Communications Commission Triennial Review Order on all parties of record in this proceeding or their attorneys of record.

Dated October 20, 2003, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.